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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT
Notification

The 2nd May, 2024

No. 13/2/105-HII(2)-2024/7158.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference **No. 27/2023** dated **19.02.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

DINESH KUMAR S/O SH. SURESH KUMAR R/O H.NO.985, KHERA MANDIR, BURAIL,
CHANDIGARH.. (Workman)

AND

THE M.D. /OCCUPIER AND MANAGER, M/S HOTEL WESTERN COURT, SCO NO.103-106,
SECTOR 43-B, CHANDIGARH. (Management)

AWARD

1. Dinesh Kumar, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed as Sweeper on 20.03.2009 by the management on monthly wages of ₹ 10,400/- (ESI + PF). The workman worked continuously with the management without any break or interruption till 14.08.2021. The workman had successfully performed his duties as per instructions, wish and wills of the management. The workman is punctual and honest towards his duties. There was no single complaint from any corner towards his job. The co-workers are eye-witness of whole service of the workman. The management was entirely satisfied with his work & conduct. He was working direct control & supervision of the management. On 16.08.2021, the workman reported for duty but the management refused to allow him duty and also refused to pay remuneration etc. to the workman.

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The workman made several verbal as well as written requests to allow him on duty but the management did not heed any single request. There is total unfair labour practice on the part of the management and clear cut case of well-planned illegal termination by the management. The management has terminated the services of the workman without any fault on his part. The management intentionally marked his absence. Due to pre-

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determination, the management has intentionally not issued attendance card to the workman and never took his signature on the attendance register. The management verbally terminated the services of the workman without giving any prior notice to the workman. Juniors to the workman were retained in service. There is violation of Section 25F, 25G & 25H of the ID Act and principles of natural justice. The management has not issued any memo, charge sheet nor conducted any inquiry in any matter before termination till date. The workman requested several times to the concerned officer number of times to take him back on duty verbally or in writing but the management did not hear his genuine requests. The workman totally un-employed after termination and is facing all difficulties of unemployed person including starvation. The management has not offered notice pay and compensation to the workman. The management has violated the pre-condition of Section 25F of the ID Act. During the whole service of the workman, the management has intentionally not complied with the provisions of the law, which has badly infringed the legal right of the workman. The management intentionally denied payment of wages, overtime allowance and leave with wages. Verbal termination order is illegal, unjustified, mala fide and in violation of provisions of the ID Act so the workman is entitled to reinstatement in service with continuity of service and full back wages. Prayer is made that termination order may be declared illegal and the workman may be reinstated with continuity of service and full back wages and other consequential benefits.

3. The management contested the claim statement by filing written statement on 07.07.2023, wherein preliminary objections are raised on the ground that the workman has approached the Court with un-clean hands as he has concealed the material fact pertaining to his gainful employment. The workman has not worked for a period of 240 days in the preceding 12 calendar months from the alleged date of his termination, as such, none of his legal rights have been infringed because statutory protection under the ID Act could only be invoked by the workman on completion of 240 working days during preceding 12 calendar months. The present reference is in pursuant to the demand notice dated 21.10.2021 served under Section 2A of the ID Act. Section 2A pre-supposes that there should be a termination, dismissal or discharge of services of the workman by his employer, only then Section 2A is attracted. In the present case, the services of the workman were never terminated. Hence, the present reference is not maintainable and deserves to be dismissed.

4. On merits, it is stated that the workman had joined the services of the management on 01.07.2010 and not on 20.03.2009 as a Safai Karamchari. His gross wages were ₹ 10,747/- and his net wages were ₹ 8,028/- per month. He remained in the employment of the Hotel Western Court till 13.08.2021. It is denied that the workman had worked continuously, as alleged. The attendance of the workman was marked along with other workmen / staff. On the basis of attendance marked, the workman was paid his monthly wages from time to time and at no point of time any discrepancy in payment was pointed out by the workman. Since the services of the workman have never been terminated, Sections 25F, 25G & 25H do not apply. Allegation of malafide intention and violation of principles of natural justice are denied being baseless. The workman has been gainfully employed and he has concealed this fact deliberately. In the peculiar circumstances of the case, no memo, charge-sheet, inquiry was required to be held. No notice pay or compensation was required to be paid as Section 25F is not attracted in the present case. The workman is not entitled to relief of reinstatement with continuity of service and full back wages. Remaining averments of the claim statement are denied being wrong and incorrect. Prayer is made that the present industrial dispute reference may be dismissed.

5. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 11.09.2023:—

1. Whether the termination of services of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits along with interest, as prayed for ? OPW

3. Whether the claimant-workman does not fall within the definition of 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947 ? OPM
4. Whether the present reference is not maintainable ? OPM
5. Relief.

7. During the pendency of the present industrial dispute, on 19.02.2024 the Learned Representative for the workman got recorded his statement, which is reproduced as below:-

"On the instructions of my client I do not want to proceed further with the present industrial dispute reference. The same may be disposed off being not pressed."

8. Heard. In view of the aforesaid statement, the present industrial dispute is disposed off being not pressed. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

Dated : 19.02.2024.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 2nd May, 2024

No. 13/2/103-HII(2)-2024/7160.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference **No. 5/2021** dated **15.02.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

TARLOCHAN SINGH, VPO HOSHIARPUR, TEH. KHARAR, DISTRICT MOHALI.
(Workman)

AND

M/S SOMPRO FACILITIES, DLF BUILDING, IT PARK CHANDIGARH THROUGH ITS PROPRIETOR. (Management)

AWARD

1. Tarlochan Singh, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed as Security Guard by the management of M/s DLF Infocity Developers (Chandigarh) Limited on 31.12.2009 and was deployed at DLF Building, IT Park, Chandigarh. The said management left the contract and the new contract was allotted to M/s SOM Enterprises in the year 2013. All the staff members including the workman were transferred to the new contractor on the same terms & conditions and on the same wages. Later on, the name of management was changed and the management of M/s SOM Enterprises started working in the name & style of M/s SOMPRO Facilities. The management and the infrastructure remained the same. The corporate office of M/s SOM Enterprises and M/s SOMPRO Facilities is one and the same is situated at Above Needs Regency, Phase - II, DLF IV, Gurgaon, telephone No.4105501. The workman remained in the continuous and un-interrupted employment from the year 2013 to 31.12.2018, when his services were illegally and wrongly terminated by refusing of work. The workman was drawing ₹ 11,022/- per month as wages at the time of termination. On 01.01.2019, the workman went to attend his normal duties. He was refused work by the management without assigning any reason and notice. The workman has been regularly visiting the work place but the work was refused to him on one pretext or the other. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F & 25H of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. The management has appointed fresh person in place of workman, which is a violation of Section 25H of the ID Act. Violation of the same makes the termination void. For his reinstatement, the workman served upon the management a demand notice dated 21.07.2020. The management neither replied the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The conciliation Officer intervened but the management requested for adjournment every time. The action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. The workman remained unemployed during the period i.e. from the date of termination till date. Prayer is made that the workman may be reinstated continuity of service along with full back wages and consequential benefits without any change in his service condition.

3. Notice was issued to the management for dated 22.03.2021 which was received back executed through Shri Parveen. From 12.03.2021 to 25.03.2021 the Presiding Officer was on quarantine leave, thus the case was taken adjourned from 22.03.2021 to 18.05.2021 for the purpose already fixed. Vide order dated 18.05.2021 fresh notice to the management was issued for 08.07.2021 which was received back executed through Shri Sanjay. Despite service of summons none appeared on behalf of the management. Thus, vide order dated 08.07.2021 the management was proceeded against ex-parte.

4. In ex-parte evidence, workman Tarlochan Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to 'W4'.

Exhibit 'W1' is the copy of three identity cards of the workman out of which two are issued by SOM Enterprises and one is issued by SOM PRO Facilities.

Exhibit 'W2' is copy of another identity card (date of issue 12.06.2015) of workman issued by SOM PRO Facilities.

Exhibit 'W3' is copy of another identity card (date of issue 10.01.2018) of workman issued by SOM PRO Facilities.

Exhibit 'W4' is copy of Employees' State Insurance Corporation card bearing IP No.6922871122 relating to Tarlochan Singh.

5. The workman examined AW2 Vijay Kumar - Supervisor, M/s SOM PRO Facilities, DLF Building, IT Park, Chandigarh.

6. On 07.02.2024 Learned Representative for workman closed ex-parte evidence.

7. I have heard the arguments of Learned Representative for the workman and perused the judicial file.

8. The workman Tarlochan Singh examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W4'.

9. From the testimony of AW1 it is duly proved on record that initially the workman was employed by M/s DLF Infocity Developers (CHD.) Limited as Security Guard on 31.12.2009. Since M/s DLF Infocity Developers (CHD.) Limited left the contract, the new contract was allotted to M/s SOM Enterprises and the workman was transferred to the new contractor on same terms & conditions and wages as were with the previous contractor. M/s SOM Enterprises later on change its name to M/s SOM PRO Facilities though the management and infrastructure remained the same as were of M/s SOM Enterprises. The employment of the workman with M/s SOM Enterprises and with M/s SOM PRO Facilities stand proved from Exhibit 'W1' to Exhibit 'W3'. From Exhibit 'W4' it is further proved that employment of the workman was covered under the ESI scheme.

10. The management /employer is required to maintain the service record of the workman. The workman summoned the concerned official of M/s SOM PRO Facilities / management to produce the entire service record of the workman. In pursuance of summons and later bailable warrants issued by this Court AW2 Vijay Kumar - Supervisor with M/s SOM PRO Facilities, DLF Building, IT Park, Chandigarh appeared and deposed that he has appeared in pursuance of the summons and bailable warrants issued by this Court. He is unable to produce the service record of workman Tarlochan Singh in this case. The service record of workman Tarlochan Singh is in possession of HR Manager of SOM PRO Facilities at Pro-Align Security India Pvt. Ltd., Plot No.1536-B, Saraswati Kunj, Sector 53, Near Khatu Shyam Mandir, Gurugram (Haryana).

Shri Alok Jha, HR Admin. of M/s SOM PRO Facility has refused to hand over the summoned record to him. From the aforesaid version of AW2 would prove that management has intentionally withheld the service record of the workman from the perusal of the Court, which raises strong presumption against the management. The management despite service of summons and despite service of summons to AW/ concerned official of the management did not bother to contest the case and preferred to be proceeded against ex-parte. Therefore, the evidence led by the workman has gone un-rebutted and un-challenged and there is no reason to disbelieve the same. Consequently, it is proved on record that the workman being remained in the continuous employment of the management from 31.12.2009 to 31.12.2018 has completed continuous period of employment of more than 240 days in twelve calendar months preceding termination of his services. Thus, the workman fulfils the requirement of Section 25B of the ID Act. Once the workman falls within the purview of Section 25B of the ID Act, the provisions of Section 25F stands attracted. The services of the workman were terminated on 01.01.2019 by the management verbally by refusal of work. Before terminating the services of the workman, the management did not comply with the conditions precedent to retrenchment of workmen, as envisaged in Section 25F of ID Act. At the time of termination of services the management did not pay retrenchment compensation to the workman. Thus, the management has violated Section 25F of the ID Act. The workman has not named any person who has been appointed at his place by the management. Therefore, the violation of Section 25H of the ID Act is not made out.

11. In view of the reasons recorded above, the termination of services of the workman in violation to Section 25F of the ID Act, is illegal and is hereby set aside. The workman has specifically pleaded that from the date of termination of services till date he has remained unemployed. Therefore, the workman is entitled to reinstatement with continuity of service and 50% of back wages. Accordingly, this industrial dispute is ex-parte allowed. The workman is held entitled to reinstatement with continuity of service and 50% of back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152

Dated : 15.02.2024.

**CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**

Notification

The 2nd May, 2024

No. 13/2/108-HII(2)-2024/7162.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **05/2018** dated **11.03.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

RAKESH PARSHAD, S/O SH. KEDAR DUTT, R/O # 1110, SECTOR 33-C, CHANDIGARH
(Workman)

AND

1. M/S BLACK CAT SECURITIES, HOUSE NO.967, PHASE-4, SECTOR 59, MOHALI, PUNJAB THROUGH ITS OWNER/PROPRIETOR.
2. STATE BANK OF INDIA (REGIONAL BRANCH), SECTOR 17, CHANDIGARH THROUGH ITS BRANCH MANGER/REGIONAL MANAGER. (Management)

AWARD

1. Rakesh Parshad, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim application are that the workman was selected and appointed by M/s Black CAT Securities (management No.1) w.e.f. 15.04.2012 as Care-Taker (Chowkidar) with various commitments. The workman was deputed at SBI Bank ATM, Indian Petrol Pump, Sector 33, Chandigarh. State Bank of India (Regional Branch), Sector 17, Chandigarh through its Branch Manager/Regional Manager (management No.2) is also necessary party being principal employer. The managements paid wages of ₹ 8,312/- p.m. in lieu of service, less than the notified Minimum Wages declared by the Government which is gross violation of Minimum Wages Act. The management No. 2 did not own his duty as principal employer according to provision of law. At the time of appointment of the workman, the management No.1 had charged ₹ 1,700/- as Dress Charges from the workman with assurance that it will be refunded to him after sometime. When the workman after sometime requested his superior to return the said amount, he made excuses to refund the same. At the end workman lost his hope regarding refund of the amount. Workman successfully performed his allotted duties as per the instructions of both the managements. Workman was punctual and honest towards his duties. There was no single complaint towards his job. The managements were entirely satisfied with his work and conduct. Workman worked continuously without any break or interruption during his whole service. Workman was working direct under the control and supervision of both the managements. On 11.02.2016, workman reported for duty but the managements refused to allow him duty without any fault of him. The workman had made various verbal requests to his superiors to allow him back on duty but the managements did not hear any single request. The management No.2 being principal employer and management No.1 being contractor have aim to reduce the legal liabilities of the workman. Otherwise, there was no meaning/use of contractor. It is unfair labour practice. The managements No.1 & 2 refused to allow duty to the workman on 11.02.2016 without any fault of the workman which is illegal on the following grounds:—

- a) The managements No.1 & 2 have not issued any memo, charge-sheet nor conducted any inquiry in any matter before termination till date.
- b) The managements did not offer notice pay and compensation to the workman according to pre-condition of Section 25-F of the ID Act, at the time of refusal to work.
- c) The managements have neither paid nor offered notice pay in lieu of the notice or compensation

to the workman. The job of workman exists as it is till date and junior to workman are still retained in service by management No.1 & 2 which is violation of Sections 25-F, 25-G and 25-H of the ID Act.

3. It is further averred that workman belongs to poor family. All his family members are dependent upon him. Workman is only bread winner of his family. There is no efficacious remedy available to the workman except to submit the present claim statement. The managements had deducted the provident fund amount from the wages of the workman but nowhere mentioned it. No receipt had been given to the workman for deduction of the Provident Fund which is a clear cut violation of the law laid down in Acts. The workman reserves all his rights to take other remedy for his grievances. The workman is entitled for 14 days sick leave with wages, 7 days casual leave, 15 days earned leave with wages annually under the provisions of The Punjab Industrial Establishment National & Festival Holidays and Casual and Sick Leaves Act, 1965 with Rules and under Section 79 of the Factories Act, 1948. The management No. 2/principal employer and the management No.1/contractor never allowed leave with wages according to above law. Whenever workman required leave due to his personal/family work or illness, he availed only sanctioned leaves. Every time the principal employer and the contractor deducted wages of leave days. The managements never issued leave card to the workman during his service. The service of the workman is uninterrupted, continuous with the principal employer and contractor from the date of joining till termination, according to Section 25-B of the I.D. Act. The workman is totally unemployed after the termination till date. Prayer is made that order of termination may be declared illegal and the workman may be reinstated with continuity of service along with full back wages and other applicable consequential benefits.

4. On notice, Shri Mewa Singh filed authority letter on behalf of management No. 1/contractor and Shri S. K. Gupta filed authority letter on behalf of management No.2/principal employer.

5. Management No.1 contested the claim statement by filing written statement dated 08.05.2018 wherein it is stated that Rakesh Parshad (*here-in-after 'workman'*) S/o Shri Kaidar Dutt R/o village #1110, Sector 33-C, Chandigarh was working with State Bank of India, ATM Sector 33, Chandigarh as a Care-Taker through contractor company M/s Black Cat Securities. State Bank of India as a principal employer made a tender and being lowest M/s Black Cat Securities got the tendered. M/s Black Cat Securities sent many time his superior to tell workman to come in the office of Black Cat Securities to remove the difficulties and to make the full and final settlement but workman never reported to the office of management No.1. State Bank of India, Regional Branch Office, Sector 17, given a letter for re-shuffling and cut in the strength of Care-Taker due to that workman was retrenched from the services. Being a principal employer State Bank of India and being contractor M/s Black Cat Securities also comes under the preview of Central Labour Department because of appropriate Government for the Banks is Central Government. In Parliamentary enactments relating to Labour, other than the Payment of Wages Act, 1936 (*here-in-after 'Act 1936'*), the enforcing authorities are either the Central Government or the State Governments depending upon the nature of industry. However, for implementing Act 1936, matters are referred to the State Governments and quite often action required to be taken by them is delayed. In order that this law is in conformity with the other labour laws, it was proposed to introduce the concept of 'appropriate Government'. The ID Act defines appropriate Government. Therefore, the 'appropriate Government' for the Bank is Central Government. The application under the ID Act cannot be made to the State Government for consideration. Prayer is made that application may be dismissed and the applicant may be directed to submit his application to the appropriate authority.

6. Management No. 2 contested the claim statement by filing separate written statement dated 08.05.2018 wherein preliminary objections are raised on the ground that this court has no jurisdiction to entertain and proceed with the present reference against the answering management. The appropriate Government in respect of any dispute against the answering management is the Central Government as defined under Section 2 of the ID Act. The termination of the workman does not fall within the definition of 'retrenchment' as prescribed under Section 2(oo) (bb) of the ID Act. However, it is made clear that workman was engaged by the management of SBI in view of the agreement between M/s Black Cat Securities/management No.1 and State Bank of India/management No.2, from time to time every year. The last agreement was executed on 01.10.2016.

The terms and conditions of the agreement were agreed by both the parties. The agreement was for period of one year effective from the date of its execution i.e. 01.10.2016 and can further be extended with the mutual consent of the parties. However, this agreement can be terminated by the bank without assigning any reason. The terms and conditions of the agreement are binding on both the parties. The workman was engaged through contractor/management No.1 and his services were terminated by the said contractor. The allegations in the notice are absolutely baseless and an abuse of the process of law. Workman neither got any cause of action to prefer the present reference nor any case on merits, against the answering management as there is no privity of contract between the workman and the answering management. There is no relationship of employee and employer between the workman and answering management. The workman was never employed by the answering management. Thus, termination of services of the workman by the answering management does not arise. The workman was employed by the management of M/s Black Cat Securities as submitted by the workman himself in Para 1 of statement of claim.

7. Further on merits, it is stated that workman was never engaged by the management bank. As per the Bank policy the workman was engaged by the contractor for providing service to the Bank as Care-Taker/Chowkidar. At no stage, the answering management has failed to perform its duty as principal employer. The fact that management No.1 had charged ₹ 1,700/- from the workman towards dress charges with assurance to refund the same and later did not refund the dress charges, relates to management No.1. It is a matter of record that the workman has performed his allotted duties as per the instructions of both the managements and he worked continuously without any break or interruption during his whole service. The workman was not employee of the answering management. There was no relationship of employer and employee. Termination of services of the workman by the answering management does not arise. Therefore, no letter was required to be issued to the workman by the answering management. The workman was engaged by the contractor/management No.1. No notice pay was required to be paid to the workman by the answering management, the workman being employee of contractor/management No. 1. No compensation was required to be paid to the workman by the management No.1 in the case of workman being an employee of the contractor/management No.1. It is denied for want of knowledge that the workman belongs to poor family and only bread winner of the family. The entitlement of leave to workman as alleged in the claim statement is denied for want of knowledge. It is also denied for want of knowledge that the service record of the workman is required to be preserved. It is stated that the alleged termination order relates to management No.1. Rest of the averments of claim statement are denied as incorrect except Para 13 which is replied in a formal manner. Prayer is made that the reference may be declined against the answering management.

8. Workman filed rejoinder to the written statement of management No.1 and separate rejoinder to the written statement of management No.2, wherein the contents of the written statements except admitted facts are denied as wrong and averments of claim statement are reiterated.

9. From the pleading of parties following issues were framed vide order dated 11.07.2018:—

1. Whether there is no employer-employee relationship between management No.2 and workman? OPM-2.
2. Whether this court has no territorial jurisdiction to try and adjudicate the Industrial Dispute? OPM-1 &2
3. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any? OPW
4. Relief.

10. In evidence workman Rakesh Parshad examined himself as AW1 and tendered his affidavit/ Exhibit AW-1/A along with photocopy of his identity card incorporating Rank 'Care Taker' valid up to 31.03.2014 issued by Black Cat Securities vide Exhibit W-1 and photocopy of his identity card incorporating Rank 'Care Taker' valid up to 31.12.2014 issued by Black Cat Securities vide Exhibit W-2. On 25.08.2023 Ld. Representative for workman closed evidence in affirmative on behalf of the workman.

11. At the stage of filing rely to the workman's application moved on dated 13.10.2023 for issuing direction to the management No.1 to produce the particulars and documents of the current occupier of M/s Black Cat Securities and evidence of managements, on dated 03.01.2024 none appeared on behalf of the management No.1. Vide order dated 03.01.2024, management No.1 was proceeded against ex-parte. Management No.1 did not adduce any oral or documentary evidence.

12. Management No.2 examined MW1 Ravi Kumar, Manager, H.R. State Bank of India, RBO-4, Sector 8, Chandigarh who tendered his affidavit Exhibit MW-1/A along with copy of agreement dated 01.10.2016 between State Bank of India, C.M. (Admin), RBO, RBO-1, Chandigarh and Black Cat Securities vide Exhibit M-1. On 04.03.2024, Ld. Representative for management No.2 closed evidence.

13. I have heard arguments of ld. Representatives for the parties and perused the judicial file. My issue-wise findings are as below:—

Issues No. 1 & 3:

14. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

15. Onus to prove issue No.1 is on the management No.2 and onus to prove issue No.3 is on the workman.

16. To prove its claim, workman Rakesh Parshad examined himself as AW1 and vide his affidavit Exhibit AW-1/A deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit W-1 and Exhibit W-2.

17. On the other hand, management No.2 examined MW1 Ravi Kumar, Manager H.R. who tendered his affidavit Exhibit MW-1/A wherein he has deposed all the material contents of the written statement filed by management No.2 which are not reproduced here to avoid repetition. MW1 supported his oral version with document Exhibit M-1.

18. From the oral as well as documentary evidence led by the parties, it comes out that admittedly workman was employed by the contractor/management No.1 and deputed to work at the ATMs of management No.2. In this regard, AW1/workman when put to cross-examination by the management No. 2 admitted as correct that he was employed by the management No. 1. AW1 further stated that his identity card was issued by management No.1. AW1 when put to cross-examination by management No. 1 admitted as correct that he was working at the ATMs of management No. 2 i.e. SBI.

19. Ld. Representative for the workman argued that workman was under the direct control and supervision of both the managements No. 1 & 2. On the other hand, it is argued by Ld. Representative for the management No.2 that there is no relationship of employer and employee between the management No. 2 and the workman. It is further argued by Ld. Representative for management No. 2 that the services of the workman were under the control and supervision of the contractor. The workman was paid salary by the management No.1 and his services were terminated by management No.1. To support his argument, Ld. Representative for management No. 2 referred cross-examination of AW1 conducted by management No. 2 wherein AW1 stated that he was being paid salary by the management No. 1. AW1 admitted as correct that he was terminated by the management No. 1. As per the judgment referred by Ld. Representative for management No.2, the expression 'control and supervision' in the context of contract labour has been explained by the Hon'ble Apex Court of India in ***International Airport Authority of India Versus International Air Cargo Workers' Union reported in (2009) 13 SCC 374*** in para38 and 39 held as below:—

"38.if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. *The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."*

20. In view of the aforesaid judgment, which is applicable to the facts of the present case to an extent, the workman is direct employee of the contractor i.e. M/s Black Cat Securities/management No.1 and the control of principal employer/management No.2 i.e. State Bank of India is secondary in nature as control over the workman is exercised by State Bank of India only after the workman has been assigned to the principal employer to do a particular work. Therefore, there is no direct relationship of employer and employee between the management No.2 and the workman.

21. The management No.1 has deployed the workman as an outsource employee with the management No.2 on the basis of contract between management No.1 & 2. As proved from Exhibit M-1 the last contract between the management No.1 & 2 started from 01.10.2016 which was valid for a period of one year. It is not the case of the management No.2 that the contract with the management No.1 has been extended further. Therefore, the contract between the management No.1 & 2 expired on 30.09.2017.

22. The workman has alleged that his services were terminated by verbal order on 11.02.2016 by refusing to allow him duty. As discussed above, AW1 in his cross-examination admitted as correct that he was terminated by management No.1. Management No.1 during cross-examination of AW1 by way of suggestions has taken the plea that after 11.02.2016 the workman did not approach office of management No.1 for re-deployment and denied the offer of alternative employment at other locations. AW1 in his cross-examination conducted by management No.1 denied the suggestion as wrong that he did not go to the office of management No.1 after 11.02.2016 seeking re-deployment. AW1 denied the suggestion as wrong that management No.1 offered him alternative employment at other locations but he refused to accept the offer. AW1 stated that he is prepared to accept all alternative employment at other locations but not without back wages. The above-mentioned suggestions put by management No.1 to the workman/AW1 being denied as wrong, are no evidence unless proved otherwise. In the present case, management No.1 did not adduce any oral or documentary evidence to prove the above-mentioned suggestions. Consequently, the services of the workman are proved to have been terminated by the management No.1 without assigning any reason. The workman was appointed by the management No.1 w.e.f. 15.04.2012 and the workman remained in continuous employment of the management No.1 up to 11.02.2016. In this manner, the workman has completed 240 days of continuous service in twelve calendar months preceding termination. Thus, the workman fulfills the requirement of Section 25-B of the ID Act. Once the workman fulfills the requirement of Section 25-B of the ID Act, then provision of Section 25-F of the ID Act is attracted. Section 25-F of the ID Act is reproduced as below:—

"25F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

23. In the present case, the management No.1 has failed to prove the compliance of the conditions laid down in Section 25-F of the ID Act, before terminating the services of the workman. Therefore, the verbal order of termination dated 11.02.2016 passed by the management No.1 being violative to Section 25-F of the ID Act is illegal and hereby set aside. Last drawn of salary of the workman was ₹ 8,312/- p.m. In view of the fact that the contract between management No.1 & 2 has already come to an end on 30.09.2017, therefore, management No.1 is liable to pay to the workman ₹ 25,000/- towards notice pay in lieu of notice period and retrenchment compensation.

24. In view of the discussion made above, issue No.1 is decided in favour of management No.2 and against the workman and issue No.3 is decided in favour of the workman against the management No.1 and declined qua management No.2.

Issue No. 2:

25. Onus to prove this issue is on the managements No.1 & 2.

26. Management No.1 did not adduce any evidence either oral or documentary. Besides, management No.1 has preferred to be proceeded against ex-parte. The management No.1 has deployed the workman at the ATM of management No.2 at Sector 33, Chandigarh. Therefore, qua management No.1, this court has the territorial jurisdiction to try and decide the present Industrial Dispute Reference/claim statement.

27. The workman has impleaded State Bank of India as management No.2 being principal employer which was a necessary party. As per the joint discussion on Issues No.1 & 3, there is no relationship of employer and employee between the management No.2 and the workman, therefore, the question of territorial jurisdiction qua management No.2 is immaterial.

28. Accordingly, this issue is decided against the management No. 1 & 2 and in favour of the workman.

Relief :

29. In the view of foregoing finding on the issue No.3 above, this industrial dispute is allowed qua management No.1 and the management No.1 is held liable to pay to the workman ₹ 25,000/- towards notice pay in lieu of notice period and retrenchment compensation. The management No.1 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152

Dated : 11.03.2024.

**CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**

Notification

The 3rd May, 2024

No. 13/2/118-HII(2)-2024/7262.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **5/2022** dated **20.03.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

DHUNI LAL, AGED 51 YEARS, S/O SH. BENI MADHAV, R/O HOUSE NO.1215, VILLAGE KISHANGARH, POST OFFICE MANIMAJRA, U.T. CHANDIGARH. (Workman)

AND

M/S FRONTIER PEST CONTROL LIMITED, SCO NO.7-A, SECTOR 7-C, MADHYA MARG, UNION TERRITORY, CHANDIGARH THROUGH ITS MANAGING DIRECTOR. (Management)

AWARD

1. Dhuni Lal, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman joined the services of M/s Frontier Pest Control Ltd. - management w.e.f. 16.08.1983 and worked continuously without any break or interruption in the services till 18.01.2019. On 19.01.2019, the workman was not allowed to join duty and was verbally told that his services are no more required by the company. The workman asked the Manager as to why he is not allowed duty and the reply was 'go to court or elsewhere wherever you like, we shall not allow duty'. The workman again approached the Manager for duty on 21.01.2019 (Monday) in the morning but again he was not allowed. The workman remained requesting the management but he was not heard. On 22.01.2019, the workman again approached the Manager with the hope that he will allow duty but was flatly refused duty and told to go to any court of law, wherever you like, we shall not allow duty. The Manager did not give any reasoning for the instant retrenchment of his services. The workman had more than 35 years of service to his credit and was working as Senior Technician. At the time of verbal retrenchment / termination he was drawing wages @ ₹ 16,100/- per month. At the time of appointment, the employer / management did not issue appointment letter. Later on he was covered under the EPF and ESI Scheme under the pressure of Frontier Pest Control Workers Union. The said union was formed by the workers of the company for the safety of their lawful rights and the workman is member of the union. The workman always performed his duties with utmost dedication. The workman was never issued any show cause notice, warning, charge-sheet or any other memo to question his work and conduct throughout his service period of more than 35 years. The workman worked continuously without any break in the services for more than 35 years and 5 months. As per law, workman was entitled for notice of retrenchment /notice pay, retrenchment compensation at the time of retrenchment /termination of his services. But at the time of retrenchment, the employer / management only passed verbal order of retrenchment. The repeated requests of the workman for duty were not entertained by the Manager of the company. The retrenchment of the workman is illegal, unjustified, against the principles of natural justice, highly arbitrary and patently malafide on the following grounds:—

- (i) At the time of passing verbal order of termination /retrenchment the workman was neither served retrenchment notice nor he was paid notice pay and retrenchment compensation. The verbal order of retrenchment was passed in violation of Section 25F of the ID Act.
- (ii) At the time of passing verbal order of termination / retrenchment on 21.01.2019, the management retained the services of his juniors in violation of Section 25G of the ID Act.

- (iii) No show-cause notice was served, no inquiry was held and no opportunity was given to the workman to defend himself.
- (iv) The retrenchment of the services of the workman was not retrenchment simplicitor but retrenchment by way of punishment as the workman was raising the issue of implementation of Labour Laws and the employers were threatening the workman for his ouster from the services of M/s Frontier Pest Control Ltd.

It is further averred that retrenchment / termination being illegal, unjustified, against the principles of natural justice, highly arbitrary and patently malafide, workman is liable to be reinstated with continuity of service along with full back wages and all other benefits applicable from time to time. On his retrenchment / termination the workman raised demand notice under Section 2A of the ID Act and copy of the demand notice was sent to the respondent / managements through Registered Post / AD. The Conciliation proceedings were initiated by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh but no amicable settlement took place despite several dates. Hence, the present statement of claim. Prayer is made that the claim may be decided in favour of the workman and against the employer by awarding reinstatement of workman with continuity of service, full back wages along with all the service benefits from time to time.

3. On notice, management contested the claim statement by filing written statement on dated 13.01.2023 wherein preliminary objections are raised on the ground that the statement of claim as filed and framed is not maintainable. The statement of claim is false, frivolous and vexatious. Workman voluntarily abandoned the job and stopped coming to the office w.e.f. 19.01.2019. Workman never applied for any leave. When the workman did not turn up for long, the management vide notice dated 08.03.2019 asked the workman to report for duty immediately and file an explanation for his unauthorized absence. Despite notice, the workman neither reported for duty nor tendered any explanation. It is well mentioned in the notice dated 08.03.2019 that in case workman fails to report for duty, it shall be presumed that he is no more interested to join the duties and would be deemed to have been abandoned the employment. Accordingly, there is neither any retrenchment nor any termination of the workman in the matter. Workman has voluntarily abandoned the job. Submission of demand notice to the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh and the consequential proceedings thereof have been unnecessarily raised by the workman to make lame excuses and to create false evidence. The present claim statement / industrial dispute so raised by the workman is ill-thought and is sheer misuse & abuse to the process of law and thus deserves to be dismissed / rejected outrightly.

4. Further on merits, it is stated that it is a matter of record that workman raised demand notice under Section 2A of the ID Act was sent to the respondent employer through Registered Post / AD. It is further stated that there is no retrenchment / termination of services of the workman as alleged. The workman himself voluntarily abandoned the service and did not join the same despite notice. It is a matter of record that the conciliation proceedings were initiated by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh but no amicable settlement took place. It is denied as wrong that the management declared the workman absent from duty w.e.f. 19.01.2019 and that after receipt of notice dated 08.03.2019, workman submitted joining report dated 12.03.2019 and the Manager did not allow the workman to join the duty. Workman voluntarily abandoned the job and stopped coming to the office w.e.f. 19.01.2019. Workman never applied for any leave. When the workman did not turn up for long, the management vide notice dated 08.03.2019 asked to report for duty immediately and file an explanation for his unauthorized absence. Despite notice workman neither reported for duty nor tendered any explanation. In the notice dated 08.03.2019, it was well mentioned that in case workman fails to report for duty, it shall be presumed that he is no more interested to join the duties and would be deemed to have been abandoned the employment. Accordingly, there is neither any retrenchment nor any termination of the workman in the matter. Workman has voluntarily abandoned the job. Submission of demand notice to the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh and the consequential proceedings thereof have unnecessarily being raised by the workman to make lame excuses. The present claim statement / industrial dispute so raised by the workman is ill-thought and a sheer misuse & abuse of process of law. It is denied as wrong that on 19.01.2019, the workman was not allowed to join duty and he was verbally told that his services are no more required by the company. Since there is neither

any retrenchment nor any termination, so question of issuance of show cause notice, warning or charge sheet etc. was required to be issued. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed/rejected in the interest of justice.

5. Workman filed rejoinder wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of parties, following issues were framed vide order dated 17.03.2023:-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits, as prayed for ? OPW
3. Whether the statement of claim is not maintainable ? OPM
4. Relief.

7. In evidence, workman Dhuni Lal examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'AW1/1' to Exhibit 'AW1/8'.

Exhibit 'AW1/1' is demand notice dated 23.01.2019 sent to the management through registered post.

Exhibit 'AW1/2' is postal receipt dated 24.01.2019.

Exhibit 'AW1/3' is copy of failure report bearing Memo No.135 dated 10.01.2020.

Exhibit 'AW1/4' is notice dated 08.03.2019 issued to workman Dhuni Lal by the management alleging un-authorised absence.

Exhibit 'AW1/5' is duty joining report dated 12.03.2019 submitted by workman Dhuni Lal to management by hand, which bears endorsement of the workman dated 13.03.2019.

Exhibit 'AW1/6' is self-attested copy of aadhar card of workman Dhuni Lal.

Exhibit 'AW1/7' is pay slip for the month of May, 2018.

Exhibit 'AW1/8' is pay slip for month of December, 2018.

8. On 17.08.2023, workman closed his evidence in affirmative.

9. On the other hand, management examined MW1 D. R. Sharma, Director, Frontier Pest Control who tendered his affidavit Exhibit 'MW1/A'. On 05.02.2024, Learned Representative for the management tendered into evidence documents Exhibit 'M1' to Exhibit 'M4', Exhibit 'M4/A', Exhibit 'M5', Exhibit 'M5/A', Exhibit 'M6' & Exhibit 'M6/A' and closed oral evidence of the management except documentary.

Exhibit 'M1' is copy of attendance register of workman Dhuni Lal for the period from January 2019 to March 2019 (colly.) containing page 1 to 3.

Exhibit 'M2' is copy of notice dated 22.01.2019 regarding absence of employees including workman Dhuni Lal.

Exhibit 'M3' is copy of notice dated 04.02.2019 regarding absence of employees including workman Dhuni Lal.

Exhibit 'M4' is copy of letter dated 08.03.2019 issued to workman Dhuni Lal at his village address i.e. Kalyanpur, PO Parsipur, District Pratapgarh, Uttar Pradesh regarding un-authorised absence.

Exhibit 'M4/A' is copy of postal receipt dated 08.03.2019.

Exhibit 'M5' is copy of letter dated 08.03.2019 issued to workman Dhuni Lal at his local address i.e. House No.1215, Kishan Garh, Manimajra, Chandigarh regarding un-authorised absence.

Exhibit 'M5/A' is copy of postal receipt dated 08.03.2019.

Exhibit 'M6' is copy of letter dated 08.03.2019 issued to workman Dhuni Lal at his another local address i.e. House No.1146, Kishan Garh, Manimajra, Chandigarh regarding un-authorised absence.

Exhibit 'M6/A' is copy of postal receipt dated 08.03.2019.

10. On 06.03.2024, Learned Representative for the management closed documentary evidence.

11. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:—

Issue NO. 1 & 2 :

12. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

13. Onus to prove both these issues is on the workman.

14. Under these issues, workman Dhuni Lal examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'AW1/1' to Exhibit 'AW1/8'.

15. On the other hand, management examined MW1 D. R. Sharma, Director, M/s Frontier Pest Control Ltd. who vide his affidavit Exhibit 'MW1/A' deposed that the statement of claim is false, frivolous & vexatious. Workman voluntarily abandoned the job and stopped coming to the office w.e.f. 19.01.2019. Workman never applied for any leave. When the workman did not turn up for long, respondent-management vide notice dated 08.03.2019 asked the workman to report for duty immediately and file an explanation for his un-authorised absence. Despite notice, the claimant / workman neither reported for duty nor tendered any explanation. It is well mentioned in the notice dated 08.03.2019 that in case claimant-workman fails to report for duty, it shall be presumed that he is no more interested to join the duties and would be deemed to have been abandoned the employment. Accordingly, there is neither any retrenchment nor any termination of the workman in the matter. He has voluntarily abandoned the job. Submission of demand notice and the consequential proceedings thereof have unnecessarily been raised by the workman to make lame excuses and create false evidence. The present claim statement / industrial dispute so raised by the workman is ill-thought and is a sheer misuse & abuse to the process of law and thus deserves to be dismissed/rejected out-rightly. MW1 further deposed that it is wrong that respondent-management declared the workman absent from duty w.e.f. 19.01.2019 and that after receipt of notice dated 08.03.2019, workman submitted joining report dated 12.03.2019 and that the manager did not allow the workman to join the duty. It is wrong that on 19.01.2019 the workman was not allowed to join duty and that he was verbally told that his services are no more required by the company. It is wrong that workman has not been allowed by the Manager for duty and that workman kept requesting the management but was not heard. The claimant /workman has voluntarily abandoned the job. It is wrong that on 22.01.2019, Manager submits that deponent refused to allow the workman to join duty and that he retrenched the service of the workman. MW1 further deposed that since there is neither any retrenchment nor any termination, no question of issuance of any show-cause notice, warning or charge sheet etc. was required to be issued. The claimant/ workman has voluntarily abandoned the job. No question of violation of principles of natural justice, arbitrariness, illegality etc. arises. There is no violation of any provisions of the ID Act in the matter. Grounds are false and frivolous. In view of submissions made above, the workman is not entitled to any alleged relief. He has voluntarily abandoned the job. To support the oral version of MW1 Learned Representative for management referred documents Exhibit 'M1' to Exhibit 'M4', Exhibit 'M4/A', Exhibit 'M5', Exhibit 'M5/A', Exhibit 'M6' and Exhibit 'M6/A'.

16. From the oral as well as documentary evidence led by the parties, it comes out that the period of employment of the workman with the management w.e.f. 16.08.1983 up to 18.01.2019 is not in dispute. In the claim statement workman has alleged that he joined the service of the management w.e.f. 16.08.1983 but in cross-examination of MW1 workman has taken the plea by way of suggest that the workman is working with the management w.e.f. 13.08.1983. In this regard MW1 in his cross-examination admitted as correct that workman was working with the management w.e.f. 13.08.1983. Although the date of joining of the

workman as alleged in the claim statement is contradictory to the date of joining as alleged in the cross-examination of MW1 but the fact remains that employment of workman from year 1983 up to 18.01.2019 is not in dispute.

17. Learned Representative for the workman argued that on 19.01.2019, when workman went to join his normal duty, he was verbally refused to join duty and refusal to join duty amounts to retrenchment / termination. Before terminating the services of the workman on 19.01.2019, the management did not comply with the conditions laid down under Section 25F of the ID Act. On the other hand, Learned Representative for management argued that the workman did not turn up to join duty w.e.f. 19.01.2019. In fact workman never applied for any leave. When the workman did not turn up for long, the management vide notice dated 08.03.2019 / Exhibit 'M6' issued under registered post vide postal receipt / Exhibit 'M6/A' required the workman to report for duty immediately and file an explanation for his un-authorised absence. Despite service of notice, the workman neither reported for duty nor tendered any explanation. In the notice dated 08.03.2019 / Exhibit 'M6', it was clearly mentioned that in case workman fails to report for duty, it shall be presumed that he is no more interested to join the duties and would be deemed to have been abandoned the employment. Accordingly, there is neither any retrenchment nor any termination of the workman in the matter. Workman has voluntarily abandoned the job. To rebut the argument of the management, Learned Representative for the workman argued that on receipt of notice Exhibit 'M6' workman visited the office of management and moved application dated 12.03.2019 / Exhibit 'AW1/5' requesting to allow him to join duty but the workman was not allowed to join the duty, the management even refused to entertain application dated 12.03.2019 / Exhibit 'AW1/5'. When the management did not entertain the application dated 12.03.2019 / Exhibit 'AW1/5', then the workman made endorsement to this effect below the application and issued copy of the same to the management under registered cover. In this manner, the termination of services of the workman w.e.f. 19.01.2019 is illegal.

18. The case of the workman is that his services are terminated by verbal order w.e.f. 19.1.2019 on the other hand, the case of the management is that the workman proceeded on un-authorised leave w.e.f. 19.1.2019 and thereafter did not report on duty despite service of notice /Exhibit 'M6' and therefore the workman has abandoned the job w.e.f. 19.1.2019. It is admitted fact that the workman remained in continuous employment of the management w.e.f. 16.08.1983 up to 18.01.2019 (services alleged to have been terminated w.e.f. 19.1.2019). In this manner, the workman is proved to have completed continuous period of more than 240 days in twelve calendar months preceding termination. Thus, the workman fulfills the requirement of Section 25B of the ID Act. Section 25F of the ID Act lays down the conditions that an employer must comply, on the retrenchment of a workman. In the present case, the plea of the management is that the workman has abandoned the job. For the purpose of termination, there has to be positive action on part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as retrenchment from service. Abandonment or relinquishment of service is always a question of intention and normally such intention cannot be attributed to an employee without adequate evidence in that behalf. In the present case, as per the plea of the management the workman proceeded on un-authorised leave w.e.f 19.1.2019. In such a situation, it was duty of the employer to take action against the workman for his misconduct of remaining absent for long. In order to discharge its duty the management is proved to have issued notice dated 08.03.2019 / Exhibit 'M6' to the workman through registered post vide postal receipt dated 08.03.2019 / Exhibit 'M6/A' relating to un-authorised absence. For better appreciation contents of Exhibit 'M6' are reproduced as below:—

"This is in reference to notice dated 22nd January 2019 and 4th February 2019, for your continued absence from 19th January 2019 till today.

We have also received a Notice regarding wrongful termination, however there was no such communication from our side and you have been wrongly informed about the same. As per our records you have been absent from your duties without approval from 19th January 2019.

Since you are absent without permission, you are hereby given this notice to report for duty immediately along with your explanation for un-authorised absence, failing which it shall be presumed that you are not interest to join your duties and you will be deemed to have abandoned your employment.

It is made clear that due to your un-authorized absence our work is suffering immensely, therefore on your failure to report duty till 18th March 2019 fresh hand would be appointed."

19. AW1 /workman when put to cross-examination admitted as correct that he had received the letter dated 08.03.2019 /Exhibit 'AW1/4' (document Exhibit 'M6' is relied upon by the workman and tendered into evidence vide Exhibit 'AW1/4') regarding his un-authorised absence and report for duty. The plea of the workman that after receiving the aforesaid letter he visited office of management to allow him to join duty but he was not allowed to join duty, does not stand proved. AW1 in his cross-examination stated that he has sent a registered letter to the management when he was not allowed to join. AW1 further stated that he has seen the judicial file. There is neither any copy of alleged registered letter written by him to the management nor there is any postal receipt showing the issuance of registered post. As far as the letter dated 12.03.2019 / Exhibit 'AW1/5' allegedly moved by the workman to the management making request therein to allow to him join duty is concerned, the presentation of that letter to the management or service of that letter to the management by way of registered post or any other mode of communication is not proved. The workman did not place on record any postal receipt showing the issuance of letter / Exhibit 'AW1/5'. Besides, the letter Exhibit 'AW1/5' bears workman's own endorsement of refusal to join duty which has no legal consequences. Under the circumstances, absence from duty in the beginning may be a misconduct but when the absence was for a very long period despite receipt of the letter of un-authorised absence from the management, it may amount to voluntary abandonment of service and in that eventuality the bonds of service come to an end automatically without requiring any order to be passed by the employer. It is established that the workman had voluntarily abandoned his service. Hence, Section 25F of the ID Act would cease to apply on him.

20. Accordingly, both these issues are decided against the workman and in favour of the management.

Issue No. 3:

21. Onus to prove this issue is on the management.

22. In the written statement the management has taken preliminary objection that the statement of claim as filed and framed is not maintainable. Learned Representative for the management has failed to explain as to how the claim statement is not maintainable. The workman on alleged termination of his services raised the demand notice. The conciliation proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh failed vide Memo No.135 dated 10.01.2020 and the workman was advised to approach the appropriate forum under Section 2A(2) of the ID Act for the adjudication of his dispute. Thus, workman has a valid cause of action and locus standi. The claim statement is well within the territorial jurisdiction of the present Court. I do not find any defect as far as maintainability of the claim statement is concerned.

23. Accordingly, this issue is decided against the management and in favour of the workman.

Relief :

24. In the view of foregoing finding on the issues No.1 & 2 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 20.03.2024.

**CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT
Notification**

The 3rd May, 2024

No. 13/2/101-HII(2)-2024/7206.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **45/2022** dated **28.02.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SHARMILA DEVI W/O SHISHPAL R/O HOUSE NO.154, SECTOR 5, PANCHKULA, HARYANA. (Workman)

AND

1. SOM PRO FACILITIES INDIA PRIVATE LIMITED, ABOVE NEEDS SHOP, REGENCY PARK-II, DLF, PHASE -IV, GURUGRAM.
2. JONES LANG LASALLE BUILDING, SCO 120-122 (2ND FLOOR), CABIN NO.204, CITY CENTRE MALL CHANDIGARH, DLF CITY CENTRE MALL, PLOT NO.1, IT, CHANDIGARH THROUGH ITS MD.
3. JONES LANG LASALLE BUILDING, 59, CITY CENTRE MALL CHANDIGARH DLF CITY CENTRE MALL, PLOT NO.1, IT, CHANDIGARH THROUGH ITS MD. (Management)

AWARD

1. Sharmila Devi, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the applicant (*here-in-after workman*) is working with the respondent No. 3 (*here-in-after management No. 3*) on the post of Lady Guard since January 2015. The workman worked with her entire integrity, hard work and honesty without any complaint. The workman did not offer any complaint at any point of time to management No. 3. The total salary of the workman was ₹12,146/- wherein the workman was paid ₹10,816/- each month as salary and ₹1,236/- were deducted as PF. On 30.05.2020 workman went to management No.3 on duty, then management No.3 told orally the workman that her work is not required any more. When the workman asked the reason for her removal, then the management No.3 did not answer. In this way, the managements have removed orally the workman from the work without any notice, compensation and personal hearing in an illegal and arbitrary manner without any rhyme and reason. The work done by the workman with management No.3 is of permanent nature. It existed earlier and exists till date with the management No.3. The management No.3 has kept some other person. The managements while removing the workman had not paid provident fund (PF), gratuity, bonus and other service benefits. The workman worked continuously with the management from January 2015 up to 30.05.2020 for more than 240 days. In this way, the managements have removed the workman against the provisions of the ID Act in an illegal manner. The workman went time and again to the managements for keeping her on work but the managements refused to keep her on work without any reason. The workman

has become unemployed since the day the managements have removed her from work. The workman has no other work except this in order to run her livelihood. The workman comes under the definition of 'workman' and the managements come under the definition of 'industry'. The workman is a poor lady. Since the removal from work, she has come under the definition of unemployed. The workman has no other source of income. The workman is still ready to do work with the management but the managements are not keeping her on work. On 09.10.2020 the workman has given an application against the managements to Labour Inspector, U.T. Chandigarh but the managements have not kept the workman on work till date. The managements have also not given salary of un-employed days to the workman upon which the above mentioned officer asked the workman to file her claim before the competent authority. The workman served a demand notice to the managements through Assistant Labour Commissioner and Conciliation Officer, Chandigarh received on dated 20.04.2021 but the managements have neither kept the workman on work nor given her the service benefits till date. The conciliation proceedings failed. Hence, the present claim application. Prayer is made that the workman may be reinstated with continuity of service along with consequential benefits.

3. On notice issued under registered cover, management No.1 appeared through Representative Shri Pawan Sharma, who filed memo of appearance on 28.10.2022 and authority letter on 06.12.2022. Thereafter, fresh authority letter on behalf of management No.1 was filed by Shri Vijay Rana - Supervisor on 12.01.2023. Despite availing repeated opportunities including opportunity subject to payment of cost, management No.1 failed to file written statement and also failed to pay the cost. On 26.05.2023 none appeared on behalf of management No.1. Thus, the management No.1 was proceeded against ex-parte vide order dated 26.05.2023.

4. Notice issued to management No.2 & 3 through ordinary processs for dated 28.10.2022 was received back executed through Shri Deepak Rao, Security Incharge. None appeared on behalf of management No.2 despite service. Thus, vide order dated 28.10.2022 the management No.2 & 3 were proceeded against ex-parte.

5. In ex-parte evidence, workman Sharmila Devi examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with demand notice dated Nil vide Mark 'A' and failure report bearing Memo No.992 dated 19.04.2022 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh vide Exhibit 'W1'. On 24.01.2024 Learned Representative for the workman closed oral evidence and on 26.02.2024 closed documentary evidence.

6. I have heard arguments of Learned Representative for the workman and perused the judicial file.

7. In order to prove its case, workman Sharmila Devi examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported her oral version with documents Exhibit 'W1' and Mark 'A'.

8. From the oral as well documentary evidence led by the workman, it comes out that the workman has impleaded Som Pro Facilities Pvt. Ltd. office at Gurugram as management No.1 and Jones Lang Lasalle Building, SCO No.120-22, Cabin No.204, City Centre Mall, Chandigarh, DLF City Centre Mall, Plot No.1, IT, Chandigarh through its M.D. as management No.2 and Jones Lang Lassale Building, 59, City Centre Mall, Chandigarh, DLF City Centre Mall, Plot No.1, IT, Chandigarh through its M.D. as management No.3. The workman has alleged that she is working as Lady Guard since January, 2015 with management No.3. It is further alleged by the workman that her total monthly salary was ₹12,146/- out of which she was paid ₹ 10,816/- and ₹ 1,236/- were deducted towards provident fund. It is further alleged by the workman that on 30.05.2020 when she went for duty, then management No.3 by verbal order removed her from service by saying that her

work is not required any more. The workman repeatedly requested the management No.3 to take her back in service to which management No.3 refused. The workman taken up the matter with the Labour Inspector. Thereafter, the workman raised demand notice. The conciliation proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh failed vide Exhibit 'W1'. Consequently, the workman filed the present claim application seeking reinstatement with continuity of service along with consequential benefits.

9. The workman in the claim statement as well as during her testimony vide affidavit Exhibit 'AW1/A' though alleged that she had been working with the management No.3 from January 2015 up to 30.05.2020 but the workman failed to disclose, who out of management No.1 to 3 appointed her. The workman has not attributed any role to management No.1. From the entire averments of claim statement and deposition of workman, it cannot be said that management No.1 is appointing authority or employer of the workman. It is also not the case of the workman that she ever remained employed with management No.1. The case of the workman is that she remained employed with management No.3 only. The management No.2 & 3 being impleaded through its M.D. are same entity with offices at two different locations. Though the workman has alleged that she was paid monthly salary of ₹12,146/- and was covered under the provident fund but the workman did not examine any witness from the Department of Provident Fund to ascertain, if the salary was paid to her by the management No.1 or by management No.2 & 3. Besides, the workman has not clarified if she was receiving salary in cash or through bank transaction. In the absence of any evidence to prove the employer of the workman, no liability of any of the managements No.1 to 3 can be fixed. The only fact that the managements No.1 to 3 are proceeded against ex-parte is no ground to hold the management No.1 to 3 liable for alleged termination of services of the workman. It is neither pleaded nor proved into evidence that the workman was deployed with the management No.3 through any contractor. It is also not proved who, out of management No.1 and management No.2 & 3, is principal employer. The entity of management No.1 is different from entity of managements No. 2 & 3.

10. In view of the reasons recorded above, the present claim statement being vague is not maintainable. As such, the industrial dispute is ex-parte declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 28.02.2024.

**CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT
Notification**

The 30th April, 2024

No. 13/2/102-HII(2)-2024/6876.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **51/2022** dated **29.02.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJIA BEGUM W/O SH. AKHTAR ALI, H.NO.1254/3, MORI GATE, MANIMAJRA, U.T. CHANDIGARH. (Workman)

AND

1. M/S SOM PRO FACILITIES INDIA PVT. LTD., PLOT NO.22-23, DLF, I.T. PARK, U.T. CHANDIGARH.
2. DLF POWER & SERVICE LTD., PLOT NO.22-23, DLF, I.T. PARK, U.T. CHANDIGARH. (Management)

AWARD

1. Rajia Begum, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed as Lady Guard by the management on 23.10.2015 and was deployed at the work place of management No.2 i.e. M/s DLF Power & Service Limited, Chandigarh. The workman remained in the continuous and un-interrupted employment up to 27.02.2021, when her services were illegally and wrongfully terminated by refusing of work. The workman was drawing ₹11,213/- as wages per month. The workman was not issued any termination letter at the time of termination. The termination was verbal. On 27.02.2021, the management refused work to the workman without assigning any reason and notice. When the workman asked the reason of termination, as there was no complaint against her work & conduct and she had very long association with the management, then the management did not give any reason of termination. The workman was issued award of appreciation by the management of Som Pro Facilities Pvt. Ltd. and M/s DLF, City Centre Mall, Chandigarh. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For her reinstatement, the workman served upon the management a demand notice dated 13.09.2021. The management neither replied the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The conciliation Officer intervened but the dispute could not be settled within the stipulated period. For her reinstatement, the workman lodged a complaint with Labour Inspector, U.T. Chandigarh. The Labour Inspector fixed number of dates for an amicable settlement but the management did not appear before the Labour Inspector on 4 dates and on 5th date the management No.1 appeared and handed over two letters dated 01.03.2021 to the workman. One of the letter was transfer letter and the other was warning letter-cum-termination letter. The action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. The workman remained unemployed during the period i.e. from the date of termination till date. Prayer is made that the workman may be reinstated continuity of service along with full back wages and consequential benefits without any change in her service condition.

3. On service of notice issued to management No.1 & 2, Shri Pawan Sharma filed memo of appearance on behalf of management No.1 on 04.11.2022. None appeared on behalf of management No.2. Thus vide order dated 04.11.2022 management No.2 was proceeded against ex-parte. On 06.12.2022 Shri Pawan Sharma filed authority letter on behalf of management No.1. Thereafter, on 12.01.2023 Shri Vijay Rana (Supervisor) filed authority letter on behalf of management No.1. Despite availing repeated opportunities including opportunity subject to payment of cost, the management No.1 failed to file written statement. Ultimately, on 26.05.2023 none appeared on behalf of the management No.1 and management No.1 was proceeded against ex-parte.

4. In ex-parte evidence, workman Rajia Bhegum examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with copies of documents Exhibit 'W1' to 'W4'.

Exhibit 'W1' is award of excellence for January 2021.

Exhibit 'W2' is certificate of participation issued by DLF, Chandigarh.

Exhibit 'W3' is warning letter dated 01.03.2021 issued by management No.1 against Rajia Bhegum.

Exhibit 'W4' is transfer letter dated 01.03.2021 issued by the management No.1.

5. On 27.02.2024 Learned Representative for workman closed oral ex-parte evidence and on 29.02.2024 closed documentary ex-parte evidence.

6. I have heard arguments of Learned Representative for the workman and perused the judicial file.

7. The workman Rajia Begum examined herself as her own witness as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported her oral version with documents Exhibit 'W1' to Exhibit 'W4'.

8. From the testimony of AW1 it is duly proved on record that the workman was employed by management No.1 as Security Guard on 23.10.2015 and was deployed at the work place of management No.2. The workman has alleged that she remained in continuous and uninterrupted employment up to 27.02.2021. From documents Exhibit 'W1' it is duly proved on record that in January, 2021 workman was issued award of excellence for outstanding contribution to Som Pro Facilities Pvt. Ltd. The workman has alleged that the warning letter dated 01.03.2021 / Exhibit 'W3' and transfer letter dated 01.03.2021 / Exhibit 'W4' were delivered to her by the management No.1 during proceedings before the Labour Inspector, U.T. Chandigarh. The perusal of Exhibit 'W3' would show that authorised signatory for Som Pro Facilities India Pvt. Ltd. has issued warning to the workman on account of continued unacceptable behaviour and performance issue. Warning letter Exhibit 'W3' issued on dated 01.03.2021 is contrary to award of excellence issued to the workman in January, 2021 / Exhibit 'W1'. It appears that warning letter Exhibit 'W3' is prepared by the management No.1 subsequently to make a ground to terminate the services of the workman. Similarly, transfer letter Exhibit 'W4' bearing dated 01.03.2021 vide which the workman has been transferred to Gurugram w.e.f. 04.03.2021 is an attempt on part of the management No.1 to dispense with the services of the workman. The management No.1 despite appearance through various Representatives did not file written statement. Non-filing of written statement despite appearance and despite availing repeated opportunities, raises strong presumption against the management No.1. Warning letter Exhibit 'W3' and transfer letter Exhibit 'W4' are of the same date i.e. 01.03.2021. As per contents of Exhibit 'W3', the management has raised allegation of involvement of the workman in physical violence at the site, misbehaviour and casual behaviour towards duty. As per the contents of Exhibit 'W4', the posting at Gurugram is given to the workman w.e.f. 04.03.2021

because of workman's expertise and experience to handle a new site. It is further mentioned in Exhibit 'W4' that '*We hope that you will make the best use of the opportunity offered to you and contribute substantially to the success of both yourself and the organization as you have always been doing and fully justify the confidence and faith placed in you by the management*'. The warning letter Exhibit 'W3' and the transfer letter Exhibit 'W4' issued simultaneously on the same date are in material contradiction from each other. As discussed above, Exhibit 'W3' is a warning against the misconduct of the workman whereas Exhibit 'W4' is a transfer on account of appreciation of work. The documents Exhibit 'W3' and Exhibit 'W4' being contradictory are destructive to each other. Moreover, as pleaded by the workman warning letter Exhibit 'W3' and transfer letter Exhibit 'W4' were not supplied to the workman during tenure of her service i.e. prior to termination of her services (services being terminated on 27.02.2021). Thus, the plea taken by the workman that letters Exhibit 'W3' and Exhibit 'W4' were given to her by the management No.1 in proceedings before the Labour Inspector appears to be genuine. The management No. 1 & 2 did not bother to contest the industrial dispute reference / claim statement and preferred to be proceeded against ex-parte. Therefore, the evidence led by the workman has gone un-rebutted and un-challenged and there is no reason to disbelieve the same. Consequently, it is proved on record that the workman being remained in the continuous employment of the management from 23.10.2015 to 27.02.2021, has completed continuous period of employment of more than 240 days in twelve calendar months preceding termination of his services. Thus, the workman fulfills the requirement of Section 25B of the ID Act. Once the workman falls within the purview of Section 25B of the ID Act, the provisions of Section 25F stands attracted. The services of the workman were terminated on 27.02.2021 by management verbally by refusal of work. Before terminating the services of the workman, the management did not comply with the conditions precedent to retrenchment of workmen, as envisaged in Section 25F of ID Act. At the time of termination of services the management did not pay retrenchment compensation. Thus, the management has violated Section 25F of the ID Act.

9. In view of the reasons recorded above, the termination of services of the workman in violation to Section 25F of the ID Act is illegal and is hereby set aside. The workman has specifically pleaded that from the date of termination of services till date she has remained unemployed. Therefore, the workman is entitled to reinstatement with continuity of service and 50% of back wages. Accordingly, the present industrial dispute is ex-parte allowed. The workman is held entitled to reinstatement with continuity of service and 50% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 29.02.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT
Notification

The 30th April, 2024

No. 13/2/98-HII(2)-2024/6878.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **90/2020** dated **01.03.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

HIRA MAHTO, H.NO. 494, PHASE 1, BAPUR DHAM COLONY, SECTOR 26, CHANDIGARH.
(Workman)

AND

1. M/S GLOBE PRECISION INDUSTRIES PVT. LTD. H.NO.73, SECTOR 28-A, CHANDIGARH.
2. M/S GLOBE PRECISION INDUSTRIES PVT. LTD., PLOT NO.11, INDUSTRIAL AREA, BADDI, DISTRICT SOLAN (HP). (Management)

AWARD

1. Hira Mahto, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the claimant-workman was appointed by the respondent No.1 (*here-in-after management No.1*) in the year 2017. The claimant-workman remained in continuous and uninterrupted employment up to 31.05.2020 when his services were illegally and wrongfully terminated. The claimant-workman was drawing ₹15,560/- per month as wages at the time of termination. On 01.06.2020 the claimant-workman went to attend his normal duties. The management No.1 told him that his services are no more required by the management. The work was refused to claimant-workman by the management without assigning any reason and notice. The claimant-workman asked the reason of termination but he was not given any satisfactory reply by the management. Although the claimant-workman was appointed as Driver but he used to work as Daftri in the office of management No.1 at Chandigarh and other allied work as per the requirement of the management. There was no complaint whatsoever against the work & conduct of the claimant-workman from any of his colleagues and superiors. The claimant-workman used to work at house No.73, Sector 28-A, Chandigarh, the local office of the management. The office has less employees for coverage under the ESI and provident fund scheme. Therefore, the management got his name entered in the muster roll of the Head Office at Baddi. The ESI scheme was necessary in case of claimant-workman being risky job of Driver. The office of management No.1 is registered in Chandigarh on the address given in the head note of the claim statement. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the claimant-workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For his reinstatement claimant-workman served upon the managements a demand notice dated 08.06.2020. The managements did not reply the demand notice. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but no settlement could be made possible during the stipulated period. During conciliation meetings the management filed letter dated 18.08.2020 vide which the management denied the contents of the demand notice. The management alleged that the claimant-workman

joined the services on 06.01.2018 and rendered his services as Driver at the registered office of the Company at Baddi, District Solan (H.P.). The management further alleged that the claimant-workman has resigned from the service on 01.11.2019. On persistent request of the family of the claimant-workman and as discussed and mutually agreed between both the parties, the claimant-workman was informed that his resignation stands excepted w.e.f. 31.03.2020 and he will be relieved from the services on 31.03.2020. In the letter under reference the management alleged that the Company does not have any place of office / business in Chandigarh. The claimant-workman submitted rejoinder on 08.09.2020 and denied the contents of the letter dated 18.08.2020 of the management. The claimant-workman denied that he tendered his resignation and there was no cause or reason to resign and he has no other employment to join. The family members of the claimant-workman have no business to interfere in the working of factory. The management was requested to produce the alleged resignation on the next date of hearing. The management did not produce the resignation letter as there was no resignation letter. He absented himself on the next date of hearing i.e. 06.10.2020. The action of the management in terminating the services of the claimant-workman is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. The claimant-workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the claimant-workman may be reinstated with continuity of service along with full back wages and all attendant benefits without any change in his service condition.

3. On notice, the management contested the claim application by filing written reply on 09.02.2021. In the reply preliminary submissions are made to the effect that the claim statement is illegal, frivolous, vexatious, malafide, void ab-initio, thus the same is not maintainable inter alia on the grounds that the claimant-workman have been duly relieved from his service w.e.f. 31.03.2020. The claimant-workman is giving false and misleading statement to extort exorbitant amount from the Company. The alleged demand notice / claim has been result of incorrect appreciation of facts and without taking into account the material facts which are already available to the claimant-workman, as stated supra. As such, the claimant did not and could not have any cause of action to issue the alleged demand notice / claim. Their Company has never kept any dues of its employees. The claimant-workman has admitted in its notice that Company has deposited his last salary for the month of March in his bank account for the days he worked with the Company. The claimant-workman has been paid his full & final settlement vide account payee cheque No.655604 dated 31.03.2020 which has not been en-cashed by him till date. The statement of claim having been filed on the basis of false allegations and with the sole motive of harassing, blackmailing and extorting money from them with the threat of false implication. The Company has no liability to pay any amount under the alleged demand notice and claim. The allegations are wrong, false, hence denied. The Company is in need of Drivers and also open up vacancies from time to time for the same. If claimant-workman wishes to join afresh, he can report on any working day during the business hours at the registered office of the Company at Plot No.11, Industrial Area, Baddi, Himachal Pradesh. Since the registered office of the Company is situated in Baddi, Himachal Pradesh, hence, this Court has no jurisdiction to entertain the present claim statement. The claim statement may be disposed off and the claim / alleged demand notice issued under the ID Act deserves to be quashed / rejected and consigned to record.

4. Further preliminary submissions are made to the effect that averments made the claimant-workman in the claim statement is not specifically replied to hereinafter, be deemed to have been denied. Nothing should be deemed to be admitted unless specifically admitted herein as a matter of record each and every allegation and / or contention thereto and / or in consistent therewith is denied and disputed. The claimant-workman had joined his services in Globe Precision Pvt. Ltd. - Company from 06.01.2018. The claimant-workman being jobless / unemployed approached them and persistently requested that he be afforded an opportunity to work as Driver at registered office of the Company at plot No.11, Industrial Area, Baddi, District Solan, Himachal Pradesh. The claimant-workman had promised at the time of joining that he shall

serve with utmost diligence and satisfaction of the management. Their Company sympathetically considered repeated requests of the claimant-workman and appointed him as Driver at the registered office of the Company. On 01.11.2019 claimant-workman had served his resignation letter upon the Company stating his inability to continue his service due to some personal reasons. On persistent request of his family members and as discussed and mutually agreed between both the parties, the claimant-workman was informed that his resignation stand accepted w.e.f. 31.03.2020 and he will be relieved from his services from 31.03.2020. On 31.03.2020 claimant-workman was relieved from his services. The claimant-workman has been duly paid his last salary for the month of March, which was credited in his bank account for the days he worked with the Company. Further similar stand is taken as taken in the preliminary submissions.

5. Further in parawise reply, it is stated that the claimant-workman has joined his services as Driver in their Company w.e.f. 06.01.2018. The claimant-workman after being relieved from his service on 31.03.2020 had never reported at registered office of the Company. It is denied that the claimant-workman had been performing duty to the satisfaction of the management. The claimant-workman had several times communicated his unwillingness to continue with his service on account of his personal reasons and wanted to leave the job. On 01.11.2019 the claimant-workman served his resignation which was accepted w.e.f. 31.03.2020 and he was relieved from his service on 31.03.2020. There has never been such an occasion that the management of Company had entrusted him any other assignment besides his routine job of Driver. The management has conveyed its dissatisfaction for his attitude towards his work and he was several times advised to mend his working and behaviour and improve upon for better results. House No.73, Sector 28-A, Chandigarh is the residence of Mr. Vinod Aggarwal - Director of the Company and there is no such office established as alleged by the claimant-workman. The registered office of the Company is at plot No.11, Industrial Area, Baddi, District Solan, Himachal Pradesh. The details of same are available on the website of Ministry of Corporate Affairs (MCA) which was already placed on record before the Office of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh during conciliation proceedings. The management-Company had received notice under Section 2A of the ID Act dated 23.07.2020 along with alleged demand notice dated 08.06.2020 at the registered office of the Company. The alleged demand notice was duly replied by the management-Company vide its reply dated 30.06.2020 through registered post dated 04.07.2020. The proceedings conducted before the Assistant Labour Commissioner-cum-Conciliation Officer, are a matter of record. Mr. Abhishek Mishra - Authorised Representative of the Company has attended the hearing held on 06.10.2020 before the Office of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh and filed his submissions dated 03.10.2020 in response to rejoinder filed by the claimant-workman. The claimant-workman is making baseless allegations which are totally after thought and false story that has been cooked up to blackmail and to extort money from them. Further similar stand is taken as taken in the preliminary objections as well preliminary submissions. Rest of the averments of claim statement are denied as wrong and incorrect. Prayer is made that the claim statement may be dismissed with exemplary cost.

6. The claimant-workman filed rejoinder wherein the contents of the written reply except admitted facts are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 12.04.2022 :-

1. Whether the services of the workman were terminated illegally, by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether this Court has no territorial jurisdiction to entertain the present claim ? OPM-2
3. Relief.

8. In evidence, workman Hira Mahto examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' wherein he deposed the entire averments of the claim statement which are not reproduced

here for the sake of brevity. AW1 supported his oral version with copy of lease deed dated 12.03.2018 between Vinod Aggarwal S/o Late Shri Prem Chand Aggarwal, R/o House No.73, Sector 28-A, Chandigarh and M/s Globe Precision Industries (P) Ltd., through its Authorised Signatory Sh. Sarabjit Singh S/o Sh. Tarlok Singh, R/o H. No.2015/14, Sector 32-C, Chandigarh Mark 'WA'. On 06.07.2023 the claimant-workman closed his evidence in affirmative.

9. On the other hand, management examined MW1 Vinod Aggarwal - Director Globe Precision Industries Pvt. Ltd., vide his affidavit Exhibit 'MW1/A' deposed the contents of the claim statement (as stated in para-wise reply) in toto, which are not reproduced here in order to avoid repetition. MW1 supported his oral version with documents Exhibit 'M1', Exhibit 'M1/1', Exhibit 'M2' to Exhibit 'M4' and Mark 'X'

Exhibit 'M1' is copy of resignation letter dated 01.11.2019.

Exhibit 'M1/1' is original post receipt dated 04.07.2020.

Exhibit 'M2' is attested copy of letter dated 18.08.2020 towards submission in matter of Hira Lal versus Globe Precision Industries Pvt. Ltd.

Exhibit 'M3' is attested copy of proceeding before the Assistant Labour Commissioner, U.T, Chandigarh.

Exhibit 'M4' is attested copy of letter dated 03.10.2020 towards submission in matter of Hira Lal versus Globe Precision Industries Pvt. Ltd.

Mark 'X' is photocopy of postal receipt dated 04.07.2020.

10. On 06.12.2023 Learned Representative for management closed oral evidence and on 26.02.2024 closed documentary evidence on behalf of the management.

11. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 2 :

12. This issue has been taken up first as it goes to the root of the case.

13. Onus to prove this issue is on management No. 2.

14. It is argued by Learned Representative for the management that M/s Globe Precision Industries Pvt. Ltd. has registered office only at Plot No.11, Baddi, Solan, Himachal Pradesh and there is no registered office of M/s Globe Precision Industries Pvt. Ltd. at House No.73, Sector 28-A, Chandigarh. Therefore, the dispute of alleged termination of the services of the workman is triable by the competent Court of Solan (Himachal Pradesh).

15. On the other hand, it is argued by Learned Representative for the workman that the local office of M/s Globe Precision Industries Pvt. Ltd. situates at House No.73, Sector 28-A, Chandigarh. In order to support his argument, Learned Representative for the workman referred copy of registered lease deed dated 12.03.2018 / Mark 'WA' and laid much stress upon the fact that as per the contents of the lease deed one room of House No.73, Sector 28-A, Chandigarh has been rent out for the office-cum-residence of the employees of M/s Globe Precision Industries Pvt. Ltd. Learned Representative for the workman referred cross-examination of MW1 wherein he has admitted as correct that in the agreement Mark-A (due to typographical mistake lease deed dated 12.03.2018 is incorrectly written as Mark 'A' instead of Mark 'WA') M/s Globe Industries Pvt. Ltd. is a second party.

16. To my opinion, lease deed Mark 'WA' is concerned, though same is not sufficiently proved into evidence by producing the original but the fact remains that MW1 in his cross-examination admitted that M/s Globe Industries Pvt. Ltd. is a second party in the said lease deed. No inference can be drawn from the

stray sentence deposed by the witness. The testimony of a witness is to be read in whole. MW1 Vinod Aggarwal is Director of M/s Globe Precision Industries Pvt. Ltd. MW1 in his cross-examination stated that he has personal office at his residence in House No.73, Sector 28-A, Chandigarh. The aforesaid version of MW1 cannot be disbelieved because the workman did not bring any evidence to show that M/s Globe Precision Industries Pvt. Ltd. is running any kind of business from the personal office of the Director. The workman has not named any employee, who is / was engaged in the said personal office at House No.73, Sector 28-A, Chandigarh. Moreover, the term of lease deed i.e. 2 years w.e.f. 01.01.2018 has already expired. The management in written reply and MW1 in Para 7 of his affidavit / Exhibit 'MW1/A' has taken the plea that registered office of the company is located at Plot No.11, Industrial Area, Baddi, District Solan, Himachal Pradesh, details of the same are available on the website of Ministry of Corporate Affairs, (MCA) which has already been placed on record before the Office of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh during the conciliation proceedings vide letter dated 03.10.2020. The management has placed on record certified copy of letter dated 03.10.2020 along with printout of the details of the management company as available on the official website of MCA vide Exhibit 'M4'. The perusal of Exhibit 'M4' would prove that registered office of Globe Precision Industries Pvt. Ltd. (date of incorporation 17.09.1986, registration No.007017) is at Plot No.11, Industrial Area, Baddi, District Solan, Himachal Pradesh. No other address of the Globe Precision Industries Pvt. Ltd. is mentioned in the same. In view of the aforesaid discussion, it is duly proved on record that M/s Globe Precision Industries Pvt. Ltd. has only one registered office at Baddi (Himachal Pradesh). The workman was employee of M/s Globe Precision Industries Pvt. Ltd. registered office at Baddi, (Himachal Pradesh). Consequently, this court has no territorial jurisdiction to adjudicate the present Industrial Dispute Reference.

17. Accordingly, this issue is decided in favour of management No.2 and against the claimant.

Issue No. 1 :

18. Onus to prove issue No.1 is the workman.

19. As per the judgment of ***Hon'ble High Court of Punjab & Haryana passed in CWP No.18958 of 1996*** titled as ***Ashok Khanna Versus M/s TTK Pharma Limited & Others, decided on 01.07.2009***, once the Court has reached to the conclusion that it does not have jurisdiction for the subject matter of the case then it should not decide any question on merits. The aforesaid judgment is applicable to the facts of the present case to an extent. Accordingly, in view of the findings recorded in issue No.2, this Court has no territorial jurisdiction to entertain the present claim. However, the claimant-workman is at liberty to avail the remedy before the appropriate forum under relevant provisions of law.

20. This issue stands decided accordingly.

Relief :

21. In the view of foregoing finding on the issue No.2 above, this industrial dispute is declined with liberty to the workman to avail the remedy before the appropriate forum under relevant provisions of law. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Mangat, S/o Kaka Ram # 35, Behlana, Chandigarh is hereby declare that I have changed my name from Mangat to Mangat Khan. In some documents my father's name mentioned as Kaka and Kaka Ram, which is the one and the same person.

[662-1]

I, Ramsukh Yadav, S/o Ram Kumar Yadav # 372, Khuda Lahora, Chandigarh is hereby declare that my name may be treated as Ramsukh Yadav, my wife's have as Israji Devi and my minor daughter's name as Ankita Yadav in her School record.

[663-1]

I, Jyoti, W/o Ameet Kumar, # 358, Phase-2, BDC Sector 26, Chandigarh, have changed my name from Jyoti to Jyoti Verma.

[664-1]

I, Subhm, S/o Puran Chand, # 2150, Sector 52, Chandigarh, have changed my name to Shubham.

[665-1]

I, Pooran Chand, S/o Dila Ram, # 2150, Sector 52, Chandigarh, have changed my name to Puran Chand.

[666-1]

I, Sunita, W/o Sanjay Kumar Yadav, R/o 2687, Vikas Nagar, Mauli Jagran, Chandigarh, have changed my name from Sunita to Savita Devi.

[667-1]

I, Niramal, W/o Sukhdev, House No. 455-A, Sector 7-A, Chandigarh, have changed my name from Niramal to Nirmala.

[668-1]

I, Bittu, S/o Janak Mehta, R/o H. No. 295-B, Dhanas, Chandigarh, have changed my name to Mutha.

[669-1]

I, Dinesh Kumar Barma, S/o Sh. Dwarka Prasad Verma, 42, Palsora, Chandigarh, declared that I have changed my name from Dinesh Kumar Barma to Dinesh Kumar Verma. All concerned note.

[670-1]

I, Krishna Bahadur, S/o Kul Bahadur Kawor, R/o H. No. 216, Sector 9-C, Chandigarh, have changed my name to Krishna Bahadur Kawor.

[671-1]

I, Amarjit Kaur, W/o Late Sh. Garja Singh, R/o H. No. 99-A, Sector 30-B, Chandigarh, have changed my name from Amarjit Kaur to Gurmit Kaur.

[672-1]

I, Elachi Devi, W/o Raja Ram, R/o H. No. 1042/1, Sector 30-B, Chandigarh, have changed my name to Latchi devi.

[673-1]

I, Reena Devi, W/o Raj Kumar Saini, R/o 1329, Deep Complex, Hallomajra, Chandigarh, do hereby solemnly affirm & declare that I have changed my name from Reena Saini to Reena Devi. All concerned note.

[674-1]

I, Amrik Kumar, S/o Naranjan Dass, R/o # 140, Sarangpur, Chandigarh, declare that I have changed my name from Amrik Kumar to Amrik Singh.

[675-1]

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